134

Supreme Court, U.S.
FILED
09-211 AUG 19 2009
OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

IN RE DONALD C. FLEMING AND JOYCE L. FLEMING,
Defendants-Petitioners-Petitioners.

(from USOA v. FLEMING, et al.)

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ORIGINAL PETITION FOR A WRIT OF MANDAMUS

WITH APPENDIX A

DONALD C. AND JOYCE L. FLEMING
C/O 1012 CRESTDALE STREET
JACKSONVILLE, FL 32211

Questions Presented for Mandamus

Due Process—Compelled Consent

1. May the district court compel the Flemings to consent to magistrate participation?

Statutory Challenges

Given *Gonzalez*,

2. Does MD FLA. R. 3.05(c)(1) violate Due Process?

3. Does MD FLA. R. 6.01(a) violate Separation of Powers?

Parties

Petitioners (Trial court defendants)

DONALD C. FLEMING (Fleming, or DC Fleming)
JOYCE L. FLEMING (JL Fleming)
Jacksonville, Florida

Pro Se

Respondents

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
Hon. ANNE C. CONWAY, Chief Judge

Hon. MARCIA MORALES HOWARD
Judge Presiding

Hon. JAMES R. KLINDT
Hon. HOWARD T. SNYDER
Magistrate Judges

And, UNITED STATES OF AMERICA

Hence, the Solicitor General's Office

[GOSHEN COVENANT CHURCH, a named defendant, was not served when this was started and is still not served.]

Petition for a Writ of Mandamus

The Flemings petition for a writ of mandamus to the United States District Court for the Middle District of Florida as follows:

Citations to decisions below

None.

Basis for Jurisdiction

(i) Date of 11th Circuit's Order
27 July 2009 [+90: Mon., 26 October 2009]
No. 09-13133-F.

(ii) Rehearing, Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. § 1651(a).

(v) Rule 29.4(b)
United States of America is a party. All activity in the federal courts.

No Oral Argument Requested

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

Trial court jurisdiction—as alleged by doj

28 U.S.C. §§ 1340, 1345, and irc § 7402.

Jailing the Flemings didn't satisfy doj!

A few years ago, doj prosecuted the Flemings. They both pled guilty. [1] Fleming was jailed, and JL Fleming was under house confinement. Now, doj wants to take their home, too.

Compelled consent to magistrate participation

Standing objection.

The Flemings responded to the suit with motions to dismiss. Every document the Flemings have filed recites their objection to magistrate participation.

Standard handling.

Despite the need to have unanimous consent appear of Record prior to any "referral," *see Gonzalez v. United States*, 128 S. Ct. 1765 (12 May 2008) ("If the parties consent"), this District Court, as just one of many throughout the system applying the exact same policy, purport to "refer" a case upon ***filing***.

Thus, the first "orders" are "signed" by an unconsented-to magistrate.

Motion to strike.

To confirm the unyielding nature of the Flemings' non-consent, they then also filed their motion(s) to strike the magistrate's "orders."

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[1] Fleming was unable to get loose from appointed "counsel," HERNANDEZ, who, after claiming no issue existed to appeal, petitioned this Court, anyway, having never even contacted Fleming about it, much less obtained Fleming's permission. *See* Nos. 03-1541, 03-1542. *But cf.* 04-1345 *with* 03-7513.

Ruling compelling mandamus.

The first magistrate self-recused. But, the judge instantly "referred" motions to a ***second*** magistrate, per the court's standing policy of compelled consent.

Subsequent trial court events.

Since then, the trial court has entered a key ruling in this case. Even after the ***court's*** insightful explanation to doj of the Flemings' Rule 11 motion(s), [27], doj *still* calls it a "motion for sanctions." [2]

The doj boyz and girlz filed their suit on 20 Feb., but "Service" didn't happen until 8 May. The 120-day period ended 22 June. On 11 June, doj requested an extension of time to Serve GOSHEN. After the running of that 120-day period, the second unconsented-to magistrate granted doj's motion. [39].

The Flemings have given Notice of their objection and, finding neither a lawful motion for an extension nor a lawful order of Record extending the time, have requested relief for violation of Rule 4(m).

Argument

Due Process—Compelled Consent

1. May the district court compel the Flemings to consent to magistrate participation?

Consent cannot be compelled.

Compelled consent violates Due Process. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 486 (1985)

[2] This suit was Served while DC Fleming was still in the hospital recovering from heart surgery and then from some very serious side consequences. So DC Fleming and JL Fleming have filed separate sets of identical motions.

(jurisdiction doesn't flow from fraud, undue influence, or overwhelming bargaining power); *Ohralik v. Ohio State Bar Assn*, 436 U.S. 447 (1978) (limiting "in person" solicitation; thus, limiting duress, coercion, and undue influence engaged in by the legal profession); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) (regarding "by mail" solicitation and other forms of legal services advertising); FRCP 8(c); *Ballard v. Comm'r*, 544 U.S. 40 (2005) (local rules don't justify (criminal) Due Process violations); 28 U.S.C. § 636**(a)**, **(c)** (magistrate participation is "by consent only"); *Gonzalez* ("If the parties consent ....") (construing § 636**(b)**); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (denial of access); *Christopher v. Harbury*, 536 U.S. 403 (2002) (same); 1 PAGE, THE LAW OF WILLS, §§ 5.7, 15.11 (rev. 2003) (coerced will is not evidence); BOGERT § 42 at 434 (rev. 2d ed. 1984 & Supp. 2004) & § 44 at 452 and n.16 (coerced trust is not evidence); *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 553-54 (1895) (1st ¶ of opinion) (non-agreement by even one beneficiary prevents amendment); U.C.C. § 1-103 (1977) (coerced transaction is no transaction); *The Bank of the United States v. The Planters' Bank of Georgia*, 22 U.S. (9 Wheat.) 904 (1824) ("government" as proprietor); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (STATE ***cannot*** compel commerce); Lev. 19:35-36 (honest system of weights and measures); *Gonzalez* (magistrate participation cannot be compelled); *Arnold v. United States*, 544 U.S. 1058 (May 31, 2005) (vacated per *United States v. Booker*, 543 U.S. 220 (2005)) (tax case; (A) never-before-seen charges, and (B) "evidence" not presented at trial and not agreed to, are inadmissible for sentencing);

Escobedo v. Illinois, 378 U.S. 478 (1964) (coerced confession is not evidence); *Miranda v. Arizona*, 384 U.S. 436 (1966) (same).

Clearly established policy.
Gonzalez ("If the parties consent").

No discretion involved.
Where overt objection appears of Record, "referral" is not an act involving discretion, because the "referral" question never arises. *Cf. Kerr v. United States Dist. Court for N. Dist. of Cal.*, 426 U.S. 394, 403 (1976). There was never signature authority to "refer" this case to any magistrate.

No adequate remedy at law.
Mandamus exists, in part, to compel officers to follow the law. Obviously, there *are* remedies at law, but they are facially inadequate. In addition to appeal, *Bivens* claims for criminal violation of rights exist. Practically, those damages swamp doj's "tax" claim. While there's no intent to waive those claims, that route simply doesn't solve this problem, which is more than ready for a *preventative* remedy. *Cf. Helling v. McKinney*, 509 U.S. 25 (1993) (problem *prevention*), *H. J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989) (same), *Schall v. Martin*, 467 U.S. 253, 298-300 (1984) (Dissent) (same), *Pulliam v. Allen*, 466 U.S. 522 (1984) (same), and *Juidice v. Vail*, 430 U.S. 327 (1977) (bad faith and harassment *both* justify *prevention*).

It's clear that the mere printing of the *Gonzalez* opinion is inadequate motivation to end the standing policy of compelled consent, which standing policy is in no way unique to this trial court. The offending courts, starting with this one, must be compelled,

overtly, to follow the law. ***All*** those courts ***must*** change their rules. Thus, where a court still practicing compelled consent is compelled to change its practices, via mandamus immediately responsive to entrance of unlawful, unsigned, facially void "orders," ***then*** the offensive rules will change.

Statutory Challenges

Given *Gonzalez*,

2. Does MD FLA. R. 3.05(c)(1) violate Due Process?

Standing policy of compelled consent.

R. 3.05(c)(1)(A) makes a blanket assertion that clerks may make rulings. Nowhere is consent of the parties even remotely considered.

R. 3.05(c)(1)(B) flat out states that "referrals" shall be made at ***filing***. How can unanimous consent possibly be found of Record before a defendant even appears much less responds?

Given *Gonzalez*,

3. Does MD FLA. R. 6.01(a) violate Separation of Powers?

Judges cannot expand legislatively defined offices.

Who sets the scope of the magistrate's office, (A) the congress or (B) the individual courts on a by-Local-Rule basis? "Magistrate, your new duty is to help the front-line troops in Iraq." "Your duty is to

provide rush hour traffic reports from the helicopter." "You have the duty to work the open bar at the congressman's fund raising event."

If a court may redefine a legislatively created office, at all, then Separation of Powers is no more. If courts may redefine a legislatively created office by Local Rules, i.e., each court redefining the office in its own image, then Separation of Powers is obliterated.

Remedies Requested

Given the foregoing, the Flemings request that this Court

1. Assert its supervisory authority in aid of its appellate jurisdiction and grant this petition;
2. Vacate the two "orders" of "referral" for lack of signature authority due to failure of consent;
3. Vacate the magistrate's "rulings" for lack of signature authority due to failure of consent;
4. Declare the identified Local Rules void;
5. Set this case on the non-argument calendar;
6. Award costs; and
7. Grant any and all other relief at law, in equity or sui generis to which they may show themselves justly entitled.

Respectfully submitted,

/s/ Donald Fleming
Donald Fleming

/s/ Joyce Fleming
Joyce Fleming

c/o 1012 Crestdale Street
Jacksonville, FL 32211

Verification by Don Fleming

Per 28 U.S.C. § 1746, and under the laws of perjury, I, DONALD C. FLEMING, depose and declare (or certify, verify, or state), that I am at least 21 years of age, that I am competent to make this Affidavit, that I have personal knowledge of these facts, and that these facts are true and correct.

The facts asserted in this petition are true and correct. In particular, we have objected to magistrate participation in every document we've filed in the trial court.

Further, Declarant sayeth not.

Executed on this the _____ of August, 2009

/s/ Don Fleming
DONALD C. FLEMING, Declarant

Verification by Joyce Fleming

Per 28 U.S.C. § 1746, and under the laws of perjury, I, JOYCE L. FLEMING, depose and declare (or certify, verify, or state), that I am at least 21 years of age, that I am competent to make this Affidavit, that I have personal knowledge of these facts, and that these facts are true and correct.

The facts asserted in this petition are true and correct. In particular, we have objected to magistrate participation in every document we've filed in the trial court.

Further, Declarant sayeth not.

Executed on this the _____ of August, 2009

/s/ Joyce Fleming
JOYCE L. FLEMING, Declarant

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2009 July 27—Mandamus denied

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 27 2009

THOMAS K. KAHN
CLERK

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 09-13133-F

Dist. Ct. Docket No. 3:09-cv-00153-MMH-HTS

IN RE:

DONALD C. FLEMING,

Petitioner. [1]

On Petition for Writ of Mandamus to the United States District Court for the Middle District of Florida

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BEFORE: EDMONDSON and CARNES, Circuit Judges.

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[1] [N.B. Case-style as filed: In re: DONALD C. FLEMING, and JOYCE L. FLEMING, Defendants-Relators. *DCF*]

Donald C. Fleming, a private individual proceeding pro se has filed this mandamus petition, requesting that we: (1) compel the district court judge to recuse herself; (2) vacate all magistrate orders; (3) vacate all referrals to a magistrate; (4) strike Middle District of Florida Rules 3.05(c)(1) and 6.01(a); and (5) adopt the magistrate's ruling granting him an extension of time to file his response.

Mandamus relief is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." Jackson v. Motel 6 Multipurpose Inc., 130 F.3d 999, 1004 (11th Cir. 1997). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. Id. The petitioner has [⊥ 2] the burden of showing that the claimed right to issuance of the writ is clear and indisputable. In re Lopez-Lukis, 113 F.3d 1187, 1188 (11th Cir. 1997).

Recusal of a district court judge is required under 28 U.S.C. § 144 when a party demonstrates that the judge "has a personal bias or prejudice" against him or in favor of an adverse party. A judge must "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Matters arising out of the course of judicial proceedings, however, are not a proper basis for recusal[,] and disqualification under § 455(a) is required only when the alleged-bias is personal in nature, that is; stemming from an extra-judicial source. Loranger v. Stierheim, 10 F.3d 776, 780 (11th Cir. 1994). Additionally, while refusals to

recuse are reviewable in mandamus, they are also reviewable on appeal. Christo v. Padgett, 223 F. 3d 1324, 1333 n.10 (11th Cir. 2000). According to statute, a district court may "designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations ... ." 28 U.S.C. § 636(b)(1)(B).

Mandamus relief is unavailable because Fleming has adequate alternative remedies for the relief that he seeks as he may request that the district court judge recuse herself and move the court to vacate the appointment of the magistrate, and he has raised his other challenges regarding the appointment of a magistrate in a motion that the district court has yet to rule on. Thus, we DENY his petition.

2009 July 27—Cover letter

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

For rules and forms visit:
www.ca11.uscourts.gov

July 27, 2009

Sheryl L. Loesch
Clerk, U.S. District Court
300 N HOGAN ST STE 9-150
JACKSONVILLE FL 32202-4271

Appeal Number: 09-13133-F
Case Style: In Re: Donald C. Fleming
District Court Number: 09-00153 CV-J-34-HTS [2]

The enclosed certified copy of this Court's Order of Dismissal [3] is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "A motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

The district court clerk is requested to acknowledge receipt on the copy of this letter enclosed to the clerk.

Sincerely,
THOMAS K. KAHN, Clerk

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[2] [N.B. There seems to be no end to the creativity of the presentation of the trial court's case number. *DCF*]

[3] [N.B. What was dismissed? *DCF*]

Reply To: Mildred Norwood (404) 335-6185

Encl.

DIS-4 (4-2009) [⊥ 2]

Joyce L. Fleming
1012 CRESTDALE ST
JACKSONVILLE FL 32211-5708

July 27, 2009

Appeal Number: 09-13133-F
Case Style: In Re: Donald C. Fleming
District Court Number: 09-00153 CV-J-34-HTS

TO: Sheryl L. Loesch

CC: Donald C. Fleming

CC: Joyce L. Fleming

CC: David Paul Rhodes

CC: A. Brian Albritton

CC: Katherine Walsh

CC: Hon. Anne C. Conway

CC: Hon. Marcia M. Howard

CC: Administrative File

Rule 14.1(i)(ii)—Additional Orders

2009 June 3—KLINDT's first "ruling" [16]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs. Case No.3:09-cv-153-J-34JRK

JOYCE L. FLEMING, DONALD C. FLEMING, and GOSHEN COVENANT CHURCH,
Defendants.
_____/

ORDER

This case is before the Court *sua sponte*. Review of the instant case discloses that Defendants Joyce L. Fleming and Donald C. Fleming ("Defendants") are proceeding pro se. Because Defendants are proceeding pro se, the Court will take the opportunity to inform them of some, but not all, of the procedural rules with which they must comply. The Court reminds Defendants of these obligations because pro se litigants are subject to the same law and rules of court as litigants who are represented by counsel, including the Federal Rules of Civil Procedure ("Fed.R.Civ.P."), and the Local Rules of

the Middle District of Florida. [1] Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989).

Pursuant to Rule 12 of the Fed.R.Civ.P., a defendant must serve an answer to the Complaint within 20 days after being served with the summons and a copy of the complaint. [2] [⊥ 2] Failure to do so could result in the entry of a default. See Fed.R.Civ.P., [?] 55. In addition, a copy of that answer is required to be filed with the Clerk of the Court. See Fed.R.Civ. P. 5(e).

Defendants shall not correspond with the Court of [or?] any Judge or Magistrate Judge of the Court in letter form. In keeping with their sworn duty to maintain complete impartiality in the exercise of their judicial duties, the Judges of this Court will [deliver their decisions and opinions] [only] in response to those document[s] filed with the Clerk's Office in accordance with the governing rules of procedure. Any correspondence sent to judicial officers will not be responded to, will be stricken from the case file, and will be returned to the sending party.

All documents filed with the Court must be in the

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[1] The parties are hereby reminded that all filings with the Court must be made in accordance with the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Middle District of Florida. The Local Rules are available for review on the public website for the Middle District Court of Florida at www.flmd.uscourts.gov and a copy may be obtained by visiting the Clerk's Office. The Federal Rules of Civil Procedure are available for review in the law libraries of the state and federal courthouses

[2] However, Mr. Fleming has been granted an extension to serve his response by separate order. [⊥ 2]

form of a pleading, [s]ee Fed.R.Civ.P. 7(a), or a motion, [s]ee Fed.R.Civ.P. 7(b). Each pleading, motion, notice, or other paper shall be presented in a separate document. In addition, all documents filed with the Court by Defendants must include a caption (the same as is set forth on Plaintiffs Complaint); a brief title that describes the nature of the document; the filing party's name and signature; and a Certificate of Service. These last two items are explained below.

All pleadings, motions, or other papers filed with the Court by Defendants must bear an original signature, or they will be rejected by the Court. Among other things, that signature serves as the party's certification, pursuant to Fed.R.Civ,P, 11(b), that the document is not submitted for any improper purpose; that the claims or defenses presented in it are warranted by existing law; and that there exists reasonable factual support for the allegations or assertions made. Defendants are advised to review and become familiar with Fed.R,Civ,P. 11, as the failure to comply with its provisions can result in the imposition of sanctions, including monetary fines. [⊥ 3]

All pleadings, motions, or other papers filed with the Court by Defendants must also include a signed Certificate of Service. The Certificate of Service is confirmation that the filing party has complied with the requirement of Fed.R.Civ.P. 5 by serving on every other party to the action (or its attorney) a copy of the particular pleading, motion, or other paper filed with the Court. At a minimum, a Certificate of Service must state the date upon which a copy of the

particular document was served on the other parties to the action (or their attorneys) and the means by which such service was made (e.g., U.S. Mail; Federal Express; hand delivery).

As previously mentioned, all requests for relief from, or action by, the Court must be in the form of a motion. If Defendants seeks any relief from, or action by, the Court, or seeks the entry of an order of any kind, they must file a proper motion requesting that relief. The motion must meet the requirements of all applicable rules, including the Local Rules and the Federal Rules of Civil Procedure. All motions must be accompanied by a legal memorandum with citation of authorities in support of the relief requested[.] [S]ee Local Rule 3.01(a). However, the memorandum cannot exceed twenty [(20)] pages [] in length[.] [S]ee Local Rule 3.01(c).

Further, Defendants are advised that prior to filing most motions, Local Rule 3.01(g) requires that the filing party confer with opposing counsel in a good faith attempt to resolve the issue. Defendants must include a certification in the motion that they have complied with this requirement and shall also notify the Court whether the parties agree on the relief requested. The Court would note that Local Rule 3.01 sets forth several other important [⊥ 4] requirements and rules governing motions filed with the Court. The failure to comply with these requirements or any other rule may result in the denial of the motion.

Defendants are also cautioned that they must abide by and comply with all orders of this Court. Failures to do so may result in sanctions, including

the striking of pleadings.

Local Rule 3.01(b) further requires that any brief or legal memorandum in opposition to a motion must be filed within 10 days after being served with that motion by opposing counsel. Defendants must timely respond to the motions filed by other parties in this case, for if they do not timely respond to such a motion, the Court may assume that they do not oppose that motion and the relief requested therein. If a party has missed a filing deadline, the party must file a motion seeking leave of Court to file the document out of time.

Lastly, Defendants are reminded that, although they are now proceeding pro se, they are not relieved of all of the obligations that rest upon an attorney. There are still many requirements with which they must comp[l]y, including those imposed by the Federal Rules of Civil Procedure and the Local Rules of this Court. Defendants are warned that the failure to comply with these requirements and obligations can have significant consequences. For example, failure to respond to discovery requests as described in the rules may result in sanctions. See Fed.R.Civ.P. 37. In addition, failure to conduct a timely Case Management Conference and submit a Case Management Report can result in dismissal of this case for lack of prosecution [3] or other sanctions. See Local Rules 3.05, 3.10.

While the Court has set forth some of the more prominent procedural obligations arid requirements of litigants in this Court, this Order does not purport

[3] [N.B. Is this a promise?! *DCF*]

to set forth all of those [⊥ 5] requirements and should not be relied upon as limiting Defendants' duties and obligations in litigating this case.

Upon consideration of the foregoing, it is hereby **ORDERED**:

Defendants shall review and comply with the provisions of this Order, as well as the Federal Rules of Civil Procedure, Local Rules of the Middle District of Florida, and any applicable statutes and regulations.

DONE AND ORDERED at Jacksonville, Florida on June 3, 2009.

/s/ James R. Klindt
JAMES R. KLINDT
United States Magistrate Judge

kaw
Copies to:

Counsel of Record
Pro Se Parties

2009 June 3—KLINDT's second "ruling" [17]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs. Case No.3:09-cv-153-J-34JRK

JOYCE L. FLEMING, DONALD C. FLEMING, and GOSHEN COVENANT CHURCH,
Defendants.
_____/

ORDER

This cause is before the Court on the Flemings' First Motion for Extension of Time to Respond to the Suit (Doc. No. 6; "Motion"), filed May 27, 2009. In the Motion, Donald C. Fleming seeks an extension of time to respond to the Complaint in this matter, only if his wife is unable to sign documents on his behalf. See Motion at 1-2. It is represented that Mr. Fleming has recently undergone heart surgery, and has other medical issues that currently prevent him from signing documents. See id. at 1. It is also represented that this Motion is unopposed by Plaintiff. See *id.* at 3.

The Court takes this opportunity to remind

Defendants that Joyce L. Fleming may not represent Donald C. Fleming (or any other party) in this action. There is nothing in the record to indicate that Joyce L. Fleming is attorney and Mr. and Mrs. Fleming have appeared as pro se Defendants. Consequently, if Donald C. Fleming seeks relief from this Court, he must actually sign and file motions on his own behalf, or specifically join in any motions filed by Joyce L. Fleming. Neither Defendant will be permitted to represent the other. Therefore, [⊥ 2] the Court construes all pending motions as pertaining to Joyce L. Fleming only. Donald C. Fleming must respond to the Complaint in his own capacity. Because of Donald C. Fleming's current medical condition, the Court finds good cause to grant an extension of time for him to respond to the Complaint.

After due consideration, it is

ORDERED:

1. The Flemings' First Motion for Extension of Time to Respond to the Suit (Doc. No, 6) is **GRANTED**.

2. Donald C. Fleming shall have up to and including **July 6, 2009** to respond to the Complaint in this matter.

DONE AND ORDERED at Jacksonville, Florida on June 3, 2009.

/s/ James R. Klindt
JAMES R. KLINDT
United States Magistrate Judge

kaw

Copies to:

Counsel of Record

Pro Se Parties

2009 June 12—Sequence placeholder—The Flemings' motion to strike

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2009 June 12—KLINDT's self-recusal [21]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs. Case No.3:09-cv-153-J-34JRK

JOYCE L. FLEMING,
DONALD C. FLEMING, and
GOSHEN COVENANT CHURCH,
Defendants.
_____/

ORDER OF RECUSAL

The undersigned hereby recuses himself from further proceedings in this action.

DONE AND ORDERED at Jacksonville, Florida, on June 12, 2009.

/s/ James R. Klindt
JAMES R. KLINDT
United States Magistrate Judge

dnl

Copies furnished to:

Counsel of Record
Pro Se Parties [⊥ 2]

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To: cmecf_flmd_notices@localhost.localdomain
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Bcc:
Subject:Activity in Case 3:09-cv-00153-MMH-JRK United States of America v. Fleming et al Order of recusal
Content-Type: text/plain***NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if

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Docket Text:
ORDER OF RECUSAL. Signed by Magistrate Judge James R. Klindt on 6/12/2009.
(DNL)
3:09-cv-153 Notice has been electronically mailed to:
Katherine Walsh katherine.walsh@usdoj .gov, southern. taxcivil@usdoj .gov

3:09-cv-153 Notice has been delivered by other means to:
Donald C. Fleming
c/o 1012 Crestdale Street
Jacksonville, FL 32211

Joyce L. Fleming
c/o 1012 Crestdale Street
Jacksonville, FL 32211

The following document(s) are associated with this transaction:
Document description: Main Document
Original filename: n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1069447731
[Date=6/12/2009] [FileNumber=6575246-0]
[08d8ae73e9e3ab7e6a6bf10dd06aff9b7f0f1d777288ec
3341f1ebb3215030093139f21d28759ab296fc39cbf4c3
61bdac12d63998eab6586926483f2230e07b]]

2009 June 15—Minute Entry [22]—MD FLA's immediate and instantaneous second "referral," which effectively overrules the Flemings' motion to strike and "bulldozes" their overt non-consent

Notice of Electronic Filing

1.
The following transaction was entered on 6/15/2009 at 8:43 AM EDT and filed on 6/15/2009

Case Name:	United States of America v. Fleming et al
Case Number:	**3:09-cv-153**

Filer:

Document Number: 22(No document attached)

Docket Text:
Case Reassigned to Magistrate Judge Howard T. Snyder. New case number: 3:09-cv-153-J-34HTS. Magistrate Judge James R. Klindt no longer assigned to the case. (SJW) Motions referred to Magistrate Judge Howard T. Snyder.

3:09-cv-153 Notice has been electronically mailed to:

Katherine Walsh katherine.walsh@usdoj.gov, southem.taxcivil@usdoj.gov

3:09-cv-153 Notice has been delivered by other means to:

Donald C. Fleming
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Jacksonville, FL 32211

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c/o 1012 Crestdale Street
Jacksonville, FL 32211

Rule 14.1(i)(iii)—Any Rehearing

None.

Rule 14.1(i)(iv)—Judgment of different date

None.

Rule 14.1(i)(v)—Statutes and Rules

The Challenged Local Rules

MD FLA. R. 3.05(c)(1)

RULE 3.05 CASE MANAGEMENT

(c) The following procedures shall apply depending upon the Track to which a case has been designated:

(1) Track One Cases --

(A) Government foreclosure or recovery cases, motions to withdraw references to the Bankruptcy Court, and proceedings under 28 USC § 2255 will normally be managed by the presiding District Judge pursuant to notices or orders entered by the Judge, **or by the Clerk under the Court's direction**, in each such case.

(B) **Other Track One cases will normally be referred at the time of filing to the Magistrate Judges** for management by them in accordance with other provisions of these local rules or standing orders entered in each Division of the Court governing the duties and responsibilities of the Magistrate Judges. **Such cases will then be managed by them pursuant to notices or orders entered by the Magistrate Judge, or by the Clerk under the Court's direction**, in each such case.

MD FLA. R. 3.05(c)(1) (all emphasis added).

MD FLA. R. 6.01(a)

RULE 6.01 DUTIES OF UNITED STATES MAGISTRATE JUDGES

(a) **In addition to** the powers and duties set forth in 28 U.S.C. Section 636(a), the United States Magistrate Judges are hereby authorized, pursuant to 28 U.S.C. Section 636(b), **to perform any and all additional duties, as may be assigned to them from time to time by any judge of this Court, which are not inconsistent with the Constitution and laws of the United States.**

MD FLA. R. 6.01(a) (emphasis added).

Local Rules included for context

MD FLA. R. 6.01(b)

(b) The ***assignment*** of duties to United States Magistrate Judges by the judges of the Court may be made by standing order entered jointly by the resident judges in any Division of the Court; or by any individual judge, in any case or cases assigned to him, through written order or oral directive made or given with respect to such case or cases.

MD FLA. R. 6.01(b) (emphasis added) ("assignment" and "referral" are two different things).

Advisory Notes to MD FLA. R. 7.01(b)

Advisory Notes to Local Admiralty Rule 7.01

(b) Comments on Specific Sections:

As defined in these Local Admiralty Rules, the term "Court" or "judicial officer" shall extend to United States Magistrate Judges assigned to the Middle District of Florida. The Committee notes that the delegation of the duties contemplated by this definition are consistent with the jurisdictional grant to United States magistrate judges as set forth in 28 USC § 636(a).

Adv. Notes for MD FLA. R. 7.01(b) (But, there's a reason that "judges" and "magistrates" have different labels—they are very different offices. *Sometimes*,

"court" must also mean "magistrate," but this is not an *always* condition.).

MD FLA. R. 7.01(i)

(i) Judicial Officer Defined: As used in these Local Admiralty Rules, the term "judicial officer" or "Court" shall mean either a United States district judge or a United States magistrate judge.

MD FLA. R. 7.01(i) (Again, this is a *sometimes* condition, not an *always* condition.)

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record is adequate.

After the mandamus was filed/served

Of particular interest are [27], an insightful discussion of the Flemings' Rule 11 motion, and [39], the first ruling by the second unconsented-to magistrate, which purports to allow doj more time to serve GOSHEN.